No. 14,718

IN THE

United States Court of Appeals

For the Ninth Circuit

PAUL M. BROPHY,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

AMICUS CURIAE BRIEF OF SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.

CHAS. H. REED,
Box 175, Coolidge, Arizona,
Attorney for Amicus Curiae.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

Table of Authorities Cited

Cases

Constitutions

Congressional Hearings, Reports and Official Records

Regulations and Rules

Statutes

No. 14,718

IN THE

United States Court of Appeals

For the Ninth Circuit

PAUL M. BROPHY,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

AMICUS CURIAE BRIEF OF SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.

This Amicus Curiae Brief is presented pursuant to paragraph 9 (c) of Rule 18, Rules of the United States Court of Appeals for the Ninth Circuit, for the San Carlos Irrigation and Drainage District, a political subdivision of the State of Arizona[1] and is sponsored by the undersigned attorney for and authorized law officer of the San Carlos Irrigation and Drainage District.

---

[1]Article 13, §7, Constitution of Arizona. Arizona Code Annotated 1939, 1952 Cumulative Supplement, page 44.

STATEMENT OF INTEREST OF AMICUS CURIAE IN THE CASE.

The Act of Congress approved June 7, 1924, commonly called the San Carlos Act, provided that no funds therein appropriated for constructing works on the San Carlos Project should be expended for construction on account of privately owned lands until a district embracing those lands had been formed under state law and such district had executed an appropriate repayment contract in accordance with the terms of the act.[2] Each owner of privately owned lands who offered his lands for inclusion in the San Carlos Project agreed by the execution of the Landowners' Agreement between such landowner and the Secretary of the Interior that all owners of lands taken into the project would organize themselves into a district in order to be able to act as a unit in all dealings with the Secretary of the Interior and also agreed that such district should enter into the Repayment Contract required by the Act of Congress of June 7, 1924.[3] Accordingly, the San Carlos Irrigation and Drainage District was duly organized under the laws of the State of Arizona to embrace the 50,000 acres of non-Indian owned lands within the San Carlos Project and executed the Repayment Contract with the United States of America, as agent for the non-Indian landowners.[4] The

---

[2]R. 24, Sec. 4, Act of Congress approved June 7, 1924.

[3]R. 40-41, Landowners' Agreement with the Secretary of the Interior.

[4]R. 112, Finding of Fact No. 6.

District was a party defendant, ranged in interest on the side of the plaintiff, in the case of the United States v. Gila Valley Irrigation District, et al., Equity 59—Globe, in which the United States District Court for the District of Arizona entered a decree, commonly referred to as the Gila River Decree, which determined and set forth, among other things, the water rights for the lands of the San Carlos Project.[5]

Appellant claims in his brief that this lawsuit was unnecessary and implies that this whole controversy is trivial. It is believed that the historical background surrounding the formation and operation of the San Carlos Project will readily disclose the importance of the issues presented by this case and will prove of value in interpreting the various instruments upon which the lower Court based its judgment. Accordingly, the Court is requested to take judicial notice of the historical background hereinafter set forth. All such matters appear either in public reports prepared by and under the direction of the executive branch of the government of the United States or are contained in legislative hearings of the Congress of the United States or are matters of public record or of common knowledge in the area involved in this litigation. It is well settled that the Courts will take judicial notice of such information and these prin-

---

[5]Stipulation For and Consent to Entry of Decree in *U. S. v. Gila Valley Irrigation District, et al.* (page 1 following printed copy of Gila River Decree).

ciples of judicial notice have been repeatedly applied in cases involving irrigation and water rights.[6]

HISTORICAL BACKGROUND.

The San Carlos Federal Irrigation Project was formed pursuant to Act of Congress and constructed with funds appropriated by Congress, primarily for the purpose of making water available for the irrigation of 50,000 acres of Indian lands within the Gila River Indian Reservation in Pinal County, Arizona.[7] Early studies of the costs of constructing and operating the project made by the government for the purpose of determining the feasibility of the undertaking, showed that the per acre cost of a project of only 50,000 acres, composed entirely of Indian lands, was prohibitive.[8] In order to hold construction, operation and maintenance costs to a practicable per acre figure it was necessary to bring non-Indian lands into the project and the project as ultimately formed consists of 100,000 acres of which 50,000

---

[6]*Arizona v. California,* 283 U. S. 423, 453 (1931), 51 S. Ct. 522; *Greeson v. Imperial Irr. Dist.,* 59 F. 2d 529, 531 (C. A. 9, 1932); *Nev-Cal Electric Securities Co. v. Imperial Irr. Dist,* 85 F. 2d 886, 904-906 (C. A. 9, 1936); *United States v. Best & Co.,* 86 F. 2d 23, 25-28 (C. C. P. A., 1936); *Rank v. Krug,* 90 F. Supp. 773, 781 (D. C. S. D. Cal., 1950); *Fletcher v. Jones,* 105 F. 2d 58, 61-62 (C. A. Dist. Col., 1939).

[7]R. 22, Sec. 1, Act of Congress approved June 7, 1924.

[8]Appendix II, page xiv, Sec. 189 of Report to the Secretary of War of a Board of Engineer Officers, United States Army (House Document 791).

acres are in Indian ownership and 50,000 in non-Indian ownership.[9]

Studies made respecting the water supply available to the project showed that the quantity of surface waters which could be relied upon for project use could not be expected to meet the irrigation needs of more than 80,000 acres[10] and it was evident that if the project was to be undertaken water sufficient to take care of the irrigation requirements of 20,000 acres, or one-fifth of the total water required for a 100,000 acre project, must come from well or pumped water. The possibility that the groundwaters could be used to form a part of the project water supply was recognized at an early date[11] and it was concluded that a 100,000 acre project was feasible, with 80,000 acres to be supplied with gravity water and 20,000 acres to be supplied by a comprehensive project system to pump water from underground sources in connection with drainage.[12]

In order to make these groundwaters which were essential to the successful operation of the project available for the irrigation of project lands, Congress

---

[9]R. 52-53, Repayment Contract between the United States and the San Carlos Irrigation and Drainage District.

[10]Appendix I, pages vi-vii, Appendix A—Report on the San Carlos Project and the History of Irrigation along the Gila River, pages 95-96, 97.

[11]Appendix II, pages x-xiii, Secs. 118, 141, 153, 156, 158, 159 of Report to the Secretary of War of a Board of Engineer Officers, United States Army (House Document 791).

[12]Appendix III, pages xvi-xvii, Hearings before the Subcommittee of House Committee on Appropriations, Seventieth Congress, First Session, pages 277-279.

by the Act approved March 7, 1928 (45 Stat. 200),[13] appropriated funds for the purpose of providing a pumping and drainage system for the project and by the same act authorized the expenditure of additional funds for development of an electric power plant at Coolidge Dam to provide electric power for the purpose, among others, of supplying electric energy to operate the project pumping system. From time to time thereafter, Congress appropriated or authorized the expenditure of additional funds for the purpose of constructing, enlarging and rehabilitating the project system of wells and pumping works. In 1934 a comprehensive program of construction of project irrigation wells was initiated which resulted in the drilling and equipping of 81 new project wells by the end of 1935, which when added to existing project wells made a total of 100 project wells, 8 of which were not equipped with pumps.[14] Records of the Bureau of Indian Affairs show that as of June 1, 1955 there were 108 active project irrigation wells, 7 of which were replacement wells to replace previous project wells and that 21 other project wells had been capped or abandoned, or are used only for pumping domestic water.[15] As of June 30, 1955 the total sum of $1,453,610.43 had been expended for the construction and acquisition of the project system of wells

---

[13]Appendix IV, pages xviii-xix, Act of Congress approved March 7, 1928 (45 Stat. 200).

[14]Appendix V, 1. (a), pages xx-xxii (see copy and letter), San Carlos Project Annual Report—Fiscal Year 1936, pages 11-13.

[15]Appendix V, 2. (e), page xxviii, San Carlos Project Pumps—Well Numbers, Location, Remarks. Revised 6/1/55.

and pumps.[16] During the calendar years 1934 through 1954 the project pumping system pumped and delivered to irrigation laterals a total of 2,079,649 acre-feet of water.[17]

The above recited facts disclose that the issues to be resolved in this case are of vital concern to all landowners of the San Carlos Project including the owners of the 50,000 acres of non-Indian owned lands who have made Amicus Curiae their agent in matters of project concern. It is evident that it is a matter of great importance to project landowners whether all the groundwaters beneath project lands shall be developed and utilized on an orderly and integrated basis by the project pumping system owned by and existing for the benefit of all project landowners and such waters made available to all project lands on an equal pro rata basis, or whether individual landowners have the right to make further drafts upon that groundwater supply for their individual use and benefit in addition to their pro rata share made available to them by the jointly owned project pumping system.

Nor is this question rendered of any less importance to project landowners because the particular project landowner now before the Court concedes that

---

[16]Appendix V, 2. (a)—2. (d), pages xxiv-xxvii, San Carlos Project Monthly Summary Cost Report—Month of June, 1952; San Carlos Project Operating Statement, Irrigation Construction —Fiscal Year 1953; San Carlos Project Operating Statement, Irrigation Construction—Fiscal Year 1954; San Carlos Project Operating Statement, Irrigation Construction—Fiscal Year 1955.

[17]Appendix V, 3. (a), page xxx, Pumped Waters of San Carlos Project.

the Secretary of the Interior may by order, rule or regulation prohibit any project landowner from making private and individual drafts against this groundwater supply. The present dispute is not a trivial matter which could have been easily and readily solved in the form of some order, rule or regulation promulgated by the Secretary of the Interior. The contention of the appellant regarding the rights of the individual project landowner and the prerogatives of the Secretary of the Interior respecting these groundwaters raises an issue of grave concern to every project landowner. That issue is: Do applicable contracts, Court decree and legislation definitely and finally and in and of themselves, guarantee to each project landowner that the groundwaters beneath all project lands are a common project asset to which each acre thereof shall at all times be entitled to the same pro rata share; or are the rights to such groundwaters and the share which any particular parcel of project lands shall be entitled to receive variable and dependent upon the uncertainties of the policies and actions of employees of the federal government?

The landowners of this project may be expected to receive small comfort from any attempted assurance that the efforts of individual landowners to receive more than their pro rata share of project groundwaters may be stopped at any time by specific order, rule or regulation of the Secretary of the Interior, when since 1938 they have observed the spectacle of this appellant tapping such water supply at will

and the Secretary of the Interior allowing such conduct to continue for some 13 years before asking the Courts to put an end to these activities of appellant.

It is the position of Amicus Curiae that one of the basic principles governing the formation of the San Carlos Project was that all groundwater beneath all project lands constitute a common project water supply and that as to both pumped and stored water each acre of project land is entitled to its equal pro rata share, that such principle was recognized and guaranteed to all project landowners by the provisions of the Landowners' Agreement, the Repayment Contract and the Gila River Decree; that no authority is vested in the Secretary of the Interior to suspend the application of this basic principle pending the making of rules, orders or regulations by that official, and that neither the Secretary of the Interior nor anyone else possesses the power to waive, relinquish or impair the project landowners' equal pro rata rights in and to these waters.

STATEMENT OF THE CASE.

Appellee's brief correctly sets forth the events which brought about the present litigation.

Aside from the question raised by appellee of whether or not appellant has perfected a proper appeal in this case, it appears to Amicus Curiae that this litigation involves the following questions:

(1) Do applicable contracts, legislation and Court decree relating to the San Carlos Project in and of

themselves prohibit a landowner of that project from drilling and operating his own individual irrigation well on the lands of such project, or may the project landowner perform such acts except when prohibited from doing so by express order, rule or regulation of the Secretary of the Interior?

(2) If the drilling and operation of such a well is proper in the absence of prohibition by Secretarial order, rule or regulation, has the Secretary of the Interior made such an order, rule or regulation with reference to appellant's well?

(3) Did the lower Court have jurisdiction to entertain this action?

ARGUMENT.

IS APPELLANT'S APPEAL FATALLY DEFECTIVE?

Amicus Curiae is in full accord with the position of the United States in this case that the answer to the question of the extent of the rights of project landowners in the groundwater beneath project lands is to be found in the provisions of the Landowners' Agreement, the Repayment Contract, the Gila River Decree and certain acts of Congress and that appellant's brief improperly attempts to restrict this question to an interpretation of certain language contained in the Landowners' Agreement. However, it is doubted that this attempt by appellant means that he has failed to appeal from the judgment and decree entered by the lower Court. While there is no justification for the assumption made in appellant's brief

that the judgment of the lower Court was predicated solely on that Court's interpretation of the Landowners' Agreement, it appears to Amicus Curiae that the record on appeal in this case informs this Court of the issues determined by the lower Court and the respects in which it is claimed by appellant that the lower Court was in error. The fact that appellant may imperfectly state the grounds upon which the lower Court based its judgment should not, we believe, preclude this Court from passing on the correctness of that judgment. This is particularly true in a case such as this where issues important to both the United States and all San Carlos Project landowners are involved. The uncertainty respecting rights of San Carlos Project landowners to the groundwaters beneath project lands has plagued both the United States and the project landowners since appellant drilled and began pumping his private well on project lands in 1938. It was hoped when the United States finally presented that dispute to the Courts in 1951 that such litigation would result in a final judgment settling that question once and for all. It would be an anomalous situation if this case, which has been looked upon as a test case to secure an adjudication which would settle this question, should go off on a technical question of appellate procedure. While such a decision would serve to stop the appellant from making private and individual use of the project groundwater supply, it would serve as no precedent with regard to those project landowners who have followed appellant's example of making private drafts against

the groundwater beneath project lands, nor to others who may contemplate doing so in the future.

DO APPLICABLE CONTRACTS, LEGISLATION AND COURT DECREE RELATING TO THE SAN CARLOS PROJECT IN AND OF THEMSELVES PROHIBIT A LANDOWNER OF THAT PROJECT FROM DRILLING AND OPERATING HIS OWN INDIVIDUAL IRRIGATION WELL ON THE LANDS OF SUCH PROJECT, OR MAY THE PROJECT LANDOWNER PERFORM SUCH ACTS UNLESS AND UNTIL PROHIBITED FROM DOING SO BY EXPRESS ORDER, RULE OR REGULATION OF THE SECRETARY OF THE INTERIOR?

Pages 5 through 10 of opening brief of appellant set forth appellant's argument in support of his contention that his acts in drilling and operating the well in question were within his rights. It will be observed that throughout such argument it is assumed by appellant that unless the provisions of the Landowners' Agreement quoted on page 5 of his brief denies to the project landowner the right to drill and operate a private irrigation well on project lands he is perfectly free to make such a draft on these groundwaters, except at such times as the Secretary of the Interior might see fit to prohibit such conduct by express order, rule or regulation.

As will be hereinafter pointed out, there is other language in the Landowners' Agreement, as well as in the Repayment Contract and the Gila River Decree, which precludes the individual project landowner from drilling or operating a private irrigation well on his project lands. However, it is believed that the language found in the Landowners' Agreement quoted

on page 5 of appellant's brief and relied upon as justifying his present conduct does not mean what appellant claims it means.

The core of the dispute regarding the meaning to be attributed to this sentence contained in the Landowners' Agreement has to do with the words "and further agrees not to drill or operate wells in any other way". Appellant argues that these words relate only to the language immediately following and mean only that the landowner agrees not to drill or operate an irrigation well on project lands contrary to any order, rule or regulation promulgated by the Secretary.

It must be apparent to anyone who carefully reads this sentence that it is far from a model of clarity and that its correct interpretation requires careful analysis. It may be that the language relied upon by appellant if read out of context and given only a cursory consideration might possibly be thought to have the meaning attributed to it by appellant. However, when this entire sentence is carefully scrutinized it is evident that appellant's interpretation must be rejected.

The first part of this sentence which reads as follows:

> "All underground and also all diffused surface water under, in or upon the white lands embraced in the said San Carlos Project, except such as may from time to time be needed and utilized by the owners of such lands for their domestic water supply, shall at all times be available to said project for

> development and use as an irrigation water supply for said project;"

provides in substance that all groundwaters in or upon the white lands in the project shall at all times be available to the project for development and use as a project irrigation water supply, except so much thereof as shall be needed and used by the landowners for their domestic water supply. The term "project" therein used obviously refers to the rights of project landowners as a whole. Separate and individual rights are reserved to the individual landowners in only such amounts as they may require for their domestic needs and all remaining groundwaters are pledged to the project lands as a whole. It will be observed that this part of the sentence requires that *all of such groundwater* shall be available as and for a project water supply *at all times.* This language does not say, nor in any way imply, that only so much of these groundwaters shall be available as a project water supply as might be left after drafts are made thereon by the private irrigation pumps of individual landowners. Neither does it say that all of these groundwaters shall be available as a project water supply only at those times when the Secretary of the Interior might make them available by ordering individual landowners not to diminish the quantity thereof. The intent of this language is plain. It was intended and was doubtless so understood by all concerned, to provide that all groundwaters beneath all white owned project lands should constitute a common project water supply to be developed and made available only by the land-

owners as a unit acting through their jointly owned project pumping system and to be shared by each acre of project land on an equal pro rata basis.

The balance of this sentence was designed and added to carry out the intent and objective expressed in the first part thereof.

The next part of this sentence which reads:

> "and the undersigned promises and agrees, in respect to his land which shall be taken into said project, to give to the United States or said project the necessary rights of way for the use of such waters"

merely contains the agreement of the landowner to give, with reference to his lands, the rights of way necessary to enable such groundwaters to be developed and utilized as a common project water supply.

The balance of the sentence which reads as follows:

> "and agrees further not to drill or operate wells in any other way or use or permit others to use said waters for irrigation contrary to any rules, orders, or regulations promulgated by the Secretary of the Interior with relation to said waters on said project."

is the part of this sentence which is in dispute. Appellant contends that it expresses but one thought and that the agreement therein made by the landowner not to drill or operate a well on project lands is tied in with and relates expressly to the language immediately following, and means that the project landowner agreed not to drill or operate an irrigation

well only at such times as the Secretary might by order, rule or regulation prohibit him from doing so.

It is the position of the United States and of Amicus Curiae that the agreement not to drill or operate a well is not so limited but was intended to be an agreement by all project landowners to refrain from drilling or operating a well on project lands, except a well for the landowner's domestic water supply. It will be observed that by this language the project landowner agrees not to drill or operate a well in any "other way". Since the only "way" provided for in the language preceding this part of the sentence in which an individual may pump such groundwater is that of pumping it for his domestic water supply, it seems clear that the "other way" referred to in this part of the sentence is for domestic use and that by this part of the sentence it was intended that each landowner should and did agree not to drill or operate any wells on his project lands except those necessary to meet his domestic water supply requirements.

It will be observed that the remainder of the sentence following the agreement not to drill or operate wells says nothing about drilling or operating wells on project lands. The normal and unstrained interpretation of this part of the sentence is that it has nothing to do with the drilling or operation of private wells by individual landowners but relates only to the use of the groundwaters which are developed and made available by the jointly owned project pumping system as and for a project water supply. This

language was used for the purpose of insuring that with regard to that common project asset each landowner would use and permit others to use the same only in conformity with rules, orders and regulations of the Secretary respecting it. For example, it was intended, no doubt, to mean that each landowner would not use a greater amount of project groundwaters per year than that set by the annual apportionment of stored and pumped waters required by the terms of the Repayment Contract to be made by order of the Secretary at the beginning of each irrigation season.[18] It may likewise have been intended to cover such things as observing with respect to project groundwaters any water conservation measures established by order, rule or regulation of the Secretary, such as the excess water system established by order of the Secretary whereby all landowners are required to pay an extra charge on each acre foot of water used by them in excess of two acre feet of water per cultivated acre per irrigation season.[19] There is no point in enumerating the numerous other examples which might be suggested of possible rules, orders or regulations had in mind when it was agreed by this language that the landowner would not use or permit others to use the groundwaters of the project contrary to any order, rule or regulation of the Secretary respecting such groundwaters. The point is that this part of the sentence deals with the use of

[18]R. 54, Repayment Contract between the United States and the San Carlos Irrigation and Drainage District.

[19]Appendix VI, page xxxii, Sec. 130.69e(b), Title 25—Indians, 1949 Edition, Code of Federal Regulations, page 153.

those groundwaters which are a common project water supply and has nothing to do with the subject of drilling or operating private wells for the irrigation of project lands by the individual landowners, which latter subject is expressly dealt with and fully covered by the part of the sentence immediately preceding by which the landowner agrees not to drill or operate a well in any way other than to develop and pump his domestic water requirements. That part of the sentence dealing with Secretarial order, rule or regulation was intended as a further safeguard of the common project groundwater supply and not as language which would have the effect of nullifying the preceding provisions of the sentence by giving individual landowners free rein to tap that common supply for their own individual benefit, unless and until explicitly ordered not to do so by the Secretary of the Interior.

One important rule of construction resorted to by the Courts in arriving at the intent of language used by contracting parties is that each word, clause, phrase and part thereof must be given effect if reasonably possible, and that a construction which results in conflicts between different parts of the agreement will not be followed if it is reasonably possible to reconcile such terms.[20] The interpretation here con-

---

[20] *F. W. Woolworth Co. v. Petersen,* 78 F. 2d 47 (C. A. 10, 1935); *Peters v. Thor,* 12 P. 2d 781 (Ariz., 1932); *Treadway v. Western Cotton Oil & Ginning Co.,* 10 P. 2d 371, 375 (Ariz., 1932); *Miller Cattle Co. v. Mattice,* 298 P. 640, 642-643 (Ariz., 1931); *Linde Dredging Co. v. Southwest L. E. Myers Co.,* 67 F.2d 969, 972 (C. A. 5, 1933).

tended for results in a consistent harmonious sentence with full effect given to each clause and part thereof. Appellant's interpretation that the project landowner has a right to make private and individual drafts against the groundwaters beneath non-Indian owned project lands, except at such times as the Secretary of the Interior might see fit to prohibit such conduct, cannot be reconciled with the first part of the sentence which guarantees to all project landowners that all such groundwaters shall at all times be available to the project landowners as a unit and to be used as a common project irrigation supply. It seems beyond all dispute that all such groundwaters cannot at all times be available for use as a project irrigation supply if sometimes some landowners are withdrawing and using some of these waters by means of their individual private irrigation wells.

It is contended that appellant's position is supported by the fact that the same language was not used in the Landowners' Agreement in dealing with the groundwaters beneath white owned lands as was used in that agreement when referring to the groundwaters beneath the Indian lands. Apparently appellant's theory is that such provisions respecting the groundwaters beneath Indian lands clearly prohibit the Indian landowner from drilling or operating a private irrigation well on his project lands and if those who drafted the Landowners' Agreement had intended the same result with reference to white owned lands they would have employed the same language. Numerous reasons suggest themselves why

the Landowners' Agreement did not deal with the groundwater beneath these two kinds of lands in the project under one provision or through use of identical words. The Landowners' Agreement was an agreement entered into and signed by each non-Indian landowner who offered his lands for inclusion in the project, and such agreement contains numerous covenants and promises of such white landowners. On the other hand, the Indian landowners were not parties to this agreement and the agreement does not, of course, set forth covenants and promises on the part of the individual Indian landowners. Under these circumstances it is perfectly natural that different language was used and such fact gives rise to no presumption that these two classes of landowners were to have different rights respecting the groundwaters beneath project lands.

There is, however, another provision in the Landowners' Agreement which does deal with the rights of both the Indian and white landowners in the pumped waters of the project. This provision reads:

> "*All Indian and white lands* which shall be in said San Carlos project and under said Coolidge Reservoir *shall be entitled to share equally in all of the stored and pumped water of said project insofar as that shall be physically feasible,* * * *" (Emphasis supplied.)[21]

Here is conclusive evidence, if any be needed, that the rights respecting groundwaters beneath the lands

[21]R. 38, Landowners' Agreement with the Secretary of the Interior.

of the San Carlos Project are the same for both Indian and white lands. Moreover, this language explicitly provides that all lands within the project shall share equally in all of the pumped water of the project. It plainly means that each and every acre of land within the project shall be entitled to the same share of all groundwaters beneath all project land. The only exception or condition attached is that of physical feasibility. It says nothing about Secretarial order, rule or regulation as a condition precedent to such equal sharing. Nor does it in any way recognize or intimate any right of any landowner to draw from such common underground water supply more than his land's equal per acre share unless, or until, stopped by order, rule or regulation of that official. This provision found in the Landowner's Agreement is in perfect harmony with the interpretation which we have heretofore placed on the sentence in the Landowners' Agreement discussed above. The interpretation contended for by appellant cannot be reconciled with this language guaranteeing to each acre of project lands the same equal share in all project groundwaters.

Appellant suggests that it is appropriate that the Secretary be vested with the discretion of deciding which project landowners may drill and operate private irrigation wells on their project land because there might exist a need for drainage pumping which would make it possible for certain landowners to drill and operate private irrigation wells with no adverse effect on the rights of other project landowners.

Should the critical water shortage which has faced the project almost from its inception ever abate and a situation such as that hypothesized by appellant requiring pumping for drainage ever come about, it seems obvious that it would be necessary to follow the plan under which the project was formed whereby such drainage waters are to be handled by the project pumping system and utilized as a part of the project irrigation water supply.[22] In view of such plan there would have been no occasion to vest in the Secretary of the Interior the discretion of relegating the function of drainage pumping to individual landowners. Nor can it properly be said that it would be beneficial to project landowners as a whole for some individual landowners to operate drainage wells on their project lands. Such drainage pumpage when handled by the project pumping system would, like all other groundwaters pumped by project pumps, form a part of the project irrigation water supply for the mutual benefit of all project lands and it would not be possible for an individual landowner, under the guise of pumping for drainage purposes, to extract and use the project groundwaters without such water augmenting the common supply, nor could he by means of a private well withdraw and use such water without it being charged against his proportionate share of the common supply.

If the provisions of the Landowners' Agreement could be said to leave any reasonable doubt whether

[22]Appendix III, pages xvi-xvii, Hearings before the Subcommittee of House Committee on Appropriations, Seventieth Congress, First Session, pages 277-279.

individual landowners may make withdrawals from the groundwater supply beneath their lands for their individual use and benefit by means of private wells and pumps, it is believed that the Repayment Contract entered into between the United States of America, acting through the Secretary of the Interior, and the San Carlos Irrigation and Drainage District contains language which should forever dispel any such doubt. By the execution of the Landowners' Agreement each non-Indian landowner offering his land for inclusion within the project made this District his agent in dealing with the Secretary and in executing the Repayment Contract. Accordingly, the provisions of that contract so entered into by the District are as much the agreement of each landowner and as binding upon him as if he had individually executed it. Paragraph 7 of the Repayment Contract provides in part as follows:

> "7. *The stored and pumped water of the San Carlos Project shall be deemed a common Project water supply in which all lands in the project* and under the San Carlos Reservoir *shall be entitled to share equally,* and *all such waters shall be distributed to the lands of the project as equitably as the physical conditions permit.* Apportionment of such water shall be made by the Secretary of the Interior at the beginning of each annual irrigation season and any increase of the water supply during a particular season may be apportioned likewise. * * *
>
> *"All water and water rights of the San Carlos Project and opportunities connected*

therewith shall be used for the advantage of that project.'' (Emphasis supplied.)[23]

The above quoted language contained in the Repayment Contract makes the groundwaters of the project a common project water supply. This can only mean that they shall be used for the equal pro rata benefit of all project lands. That this is so is made abundantly clear by the succeeding provisions of the above quoted language to the effect that all project lands shall be entitled to share equally in these waters and the further direction that such waters shall be distributed to project lands as equitably as physical conditions will allow, with the final direction that all project water and water rights and all opportunities connected therewith shall be used for the benefit of that project.

The foregoing language could have been intended for only one purpose, namely: that of defining and fixing the status of the stored water impounded behind the Coolidge Dam and the groundwaters underlying project lands to be that of the common asset of all project lands and of spelling out that each acre of land within the project shall be entitled to the same equal share therein and that the distribution of this water shall be in such manner as to recognize and carry out those rights. This being so, it follows that no project landowner or any group or combination thereof shall receive more than his or their equal share in that common project supply, nor shall he or they deprive any

[23]R. 54-55, paragraph 7, Repayment Contract between the United States and the San Carlos Irrigation and Drainage District.

other landowner of his equal rights therein, whether by tapping that common supply by means of private irrigation wells or by other means or devices and no Secretarial order, rule or regulation is needed, required or appropriate to make this so.

And finally the Gila River Decree in defining and adjudicating all project water rights recognized these groundwaters as a project water supply and provided on page 105:

> "That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project insofar as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature as long as the stored and unstored water supply for said Project shall be sufficient for Project needs, and as far as that shall be physically feasible; * * *"

It will be observed that the provisions of the Landowners' Agreement, the Repayment Contract and the Gila River Decree serve to show a consistent intent steadily followed to make all groundwaters beneath all project lands a common project water supply to be developed only by the project through the joint efforts of project landowners by means of the project pumping system for the equal benefit of each acre of project land. This central theme runs through and is carried out by each of these instruments and it is

impossible to reconcile any such argument as that advanced by appellant with this fundamental concept of the rights to the use of the groundwaters beneath project lands.

Nowhere is there anything in any of these instruments which in any way indicates that the basic concept of equal sharing in project groundwaters is to become effective only when and if the Secretary of the Interior might see fit to give it life by implementing orders, rules or regulations.

It should be kept in mind that the landowners, as well as the government, had definite objectives when they offered their lands for inclusion in the project. There were already irrigation wells and pumps on some of the lands offered for inclusion in the project and the owners of such lands agreed to convey such wells and pumps to the project.[24] It seems a certainty that no landowner would for one moment have considered signing an agreement whereby he bound himself to turn over to the project existing wells and pumps owned by him so that they might become a part of the jointly owned pumping system, if the Secretary of the Interior was to be vested with the discretion of permitting other landowners on the project to drill and operate private wells upon their project lands for their individual use and benefit and in competition with the jointly owned project pumping system. The project landowners no doubt intended that the agreement which they signed by which they

[24]R. 33, Landowners' Agreement with the Secretary of the Interior.

offered their lands for inclusion in the project should insofar as possible safeguard them in their plans to obtain a reliable water supply and that this would be so, not only as to attempted encroachments by their neighbors, but also as to arbitrary or ill-advised action by government employees. It is not to be supposed that such landowners were unaware that the policies of government bureaus are, on occasion, determined by small men in high places who split hairs over rules and regulations. Doubtless, the landowners in their daily living observed the uncertainties of bureaucratic policies and how those policies sometimes waver when subjected to the pressures of political expediency and are altered with changes of administration or departmental personnel. The prospect of obtaining a reliable water supply for their lands must have been in those times, as it is now, too precious for these landowners to be willing that their rights in these important waters should rest upon the uncertainties of the acts of men rather than be guaranteed to them by the binding provisions of written instruments.

There is one other matter which is of assistance in passing upon this question. That is the Act of Congress of March 7, 1947 (61 Stat. 8)[25] and the legislative history of that act. It will be seen by a reading of such act that in 1947 the San Carlos Project faced an emergency due to a deficient water supply resulting from a severe and extended drouth. This emer-

[25]Appendix VII, pages xxxiii-xxxvi, Act of Congress approved March 7, 1947 (61 Stat. 8).

gency necessitated the enlargement of the project well and pumping system and rehabilitation and repair of the existing project pumping works. It was thought that the accomplishment of this work would be expedited if the District acted as agent of the Secretary of the Interior in enlarging and repairing the project well and pumping system. However, even under these circumstances, doubt existed that the Secretary could authorize any but employees of his department to drill wells on project lands although such wells were to be an addition to the project pumping system and for the development of water exclusively for use as a part of the common project water supply. Accordingly, it was deemed advisable to secure authorization of the Congress for the Secretary to enter into a contract with the District whereby the District was to act as agent for the Secretary in performing this work. It will be observed that the Congress took pains to provide in such legislation that the groundwaters so developed by the District were to be "exclusively for use as a part of the common stored and pumped water supply of said project" for the purpose of "making underground waters available exclusively for use on all lands of the project".

The legislative history of this act is highly significant. The Senate Committee on Public Lands in reporting on this proposed act reported:

> "The San Carlos irrigation project, Arizona, comprises 100,000 acres of land, 50,000 acres of which are Indian lands, and the remaining 50,000 acres in white ownership. The project

> was built by the Indian Service; and under contracts entered into between the Interior Department and the white landowners, *these deeded their right to the use of the underground water to the Department of the Interior to be developed as a part of the common water supply for the project.*" (Emphasis supplied.)[26]

Similarly, the House Committee on Public Lands stated in its report:

> "To prevent dissipation of the underground waters, these farmers were required by the Government *to surrender their ordinary privileges of land ownership in tapping the underground water supply.*" (Emphasis supplied.)[27]

Such legislative history clearly shows that the branch of the federal government which authorized and provided the funds for the construction of the San Carlos Project considered that when the non-Indian landowners offered their lands for inclusion in the project pursuant to authorization by the Congress, such landowners surrendered their individual rights to withdraw the groundwaters beneath their project lands and agreed that these groundwaters should be developed as a part of the common water supply for the benefit of the whole project.

The rules for construction of contracts and the Court decisions cited in support thereof appearing on

---

[26]Senate Report No. 23, Eightieth Congress, First Session.
[27]House Report No. 51, Eightieth Congress, First Session.

pages 8 and 9 of appellant's opening brief announce sound principles of law but lend no support to appellant's position in this case. Appellant is, of course, correct in stating that the Courts in interpreting written contracts will endeavor to give effect to the mutual intention of the parties as it existed when the contract was executed. It is submitted, however, that the mutual intention of all parties concerned in the formation of the San Carlos Project can be given effect only if the various applicable instruments affecting the project be interpreted as evidencing the intent that all project landowners pooled the groundwaters beneath their project lands into a common water supply to be developed and made available by the jointly owned project pumping system and that it was not intended that the Secretary of the Interior be vested with any discretion to enlarge upon the equal pro rata rights of any project landowner in that common water supply.

Amicus Curiae fully endorses the principle contended for by appellant that the Courts will give the construction most equitable to the parties, and one which will not give one of the parties an unfair advantage over the other. This principle gives no comfort to appellant's position. When the members of a group enter into a joint enterprise and part with their individual control over the assets which they pool with others in the common undertaking it would be an extreme example of unfair advantage for some of those who have joined in that undertaking to receive a full share of the fruits of the joint efforts and

at the same time secure individual and private benefits at the expense of the common good. We know of nothing which would work greater inequities to project landowners than a disorganized scramble by individual landowners to place themselves in favored positions through their separate efforts to obtain the largest possible amount of the groundwaters beneath project lands. Inevitably those landowners with the largest acreage, or the greatest financial resources, or the most favorable geographical location, would be privileged over other landowners who could not join in such race due to a poor water table beneath their lands, or because their acreages or bank accounts are not large enough to justify the expense of installing private irrigation wells and pumping equipment. Such a situation would bring about an unequal and inequitable use of a limited resource owned in common by all project landowners, and the resulting loss of control by the project of this important water supply would seriously jeopardize the investments of the landowners and the government in the project.

IF THE DRILLING AND OPERATION OF SUCH A WELL IS PROPER IN THE ABSENCE OF PROHIBITION BY SECRETARIAL ORDER, RULE OR REGULATION, HAS THE SECRETARY OF THE INTERIOR MADE SUCH AN ORDER, RULE OR REGULATION WITH REFERENCE TO APPELLANT'S WELL?

Amicus Curiae has nothing to contribute which would be of assistance to the Court on this phase of the case.

DID THE LOWER COURT HAVE JURISDICTION TO ENTERTAIN THIS ACTION?

Appellant contends that appellee should have instituted ancillary proceedings in the case of the United States v. Gila Valley Irrigation District, Equity 59—Globe, for the enforcement of the decree rendered in that case instead of the present action and cites in support of his contention the case of *Taylor v. Tempe Irrigating Canal Company,* 193 P. 12 (Ariz., 1920).

The principles announced in that case are not applicable to the present case. The decision in that case was expressly based on the particular facts before the Court and the specific wording of the so-called Kent Decree. The case involved the duty of water set by the Kent Decree, the plaintiff having sought to enforce the delivery to him of a precise quantity or rate of flow of water to which he claimed to be entitled under the provisions of the Kent Decree. The decision in the *Taylor* case pointed out that the duty of water set by the Kent Decree was only experimental and tentative and that the Court which rendered it expressly and by the terms of the decree itself retained jurisdiction to "interpret, modify, enlarge, or annul 'any order, direction, or action of the commissioner in carrying out all the provisions of the decree,' and also upon 'good cause shown from time to time to modify, enlarge, or abrogate any portion or feature of the decree or of this decision and tables filed herewith as a part hereof by order or supplemental judgment or decree to be entered at the foot hereof' ". It was held that the plaintiff, being a party

to that decree and bound by its provisions, was, if he sought redress as to matters over which the Court in the Kent Decree retained jurisdiction, required to seek that redress in the Court which retained and had jurisdiction thereof.

The present case is not comparable to the *Taylor* case. No language such as that in the Kent Decree quoted and relied upon in that case is to be found in the provisions of the Gila River Decree. To the contrary, the Gila River Decree is complete and final in form and intent as to the water rights therein determined and the Court rendering such Decree retained no jurisdiction to modify or change any rights so adjudicated.

That the decision in the *Taylor* case was predicated upon the peculiar circumstances before the Court in that case is indicated by the fact that in other cases involving the enforcement of decreed water rights the Supreme Court of Arizona has not restricted litigants to ancillary proceedings in the action in which such water right decree was rendered. In fact, water rights established by the Gila River Decree itself have been before the Arizona Courts and the Court assumed and exercised jurisdiction to enforce water rights adjudicated by that Decree.[28]

In the absence of peculiar facts and circumstances such as those controlling in the *Taylor* case, the rule is that one who is a party to a water right decree may

---

[28]*Olsen v. Union Canal & Irrigation Co.*, 119 P. 2d 569 (Ariz., 1941).

enforce its provisions against others who are parties thereto by an independent action for an injunction restraining acts in violation of the provisions of the decree.[29] This precise relief was sought and obtained from the United States Supreme Court in the case of State of Wyoming v. State of Colorado, 298 U. S. 573, 56 S. Ct. 912, 80 L. ed. 1339.

As has been demonstrated, the acts of the appellant complained of and sought to be restrained in the instant case are in violation of the contract known as the Landowners' Agreement signed by appellant's predecessor in interest and the Repayment Contract entered into on behalf of all non-Indian landowners by the District. The complaint filed in the Federal District Court in this case is predicated upon appellant's violation of the contractual provisions of those agreements as well as his violation of the terms of the Gila River Decree. Injunction is the appropriate remedy to restrain the unlawful taking of water in violation of contractual obligations.[30] It is apparent that the same acts may be in violation of the terms of a contract and also in violation of the provisions of a judgment. When that is the case, we know of no principle of law and appellant has cited none, which confines a litigant to the relief of ancillary proceed-

---

[29]*Biggs v. Miller,* 147 S. W. 632 (Tex., 1912); *Ward County Water Imp. Dist. v. Ward County Irr. Dist.,* 237 S. W. 584 (Tex., 1921). See also: *Sain v. Montana Power Co.,* 84 F. 2d 126 (C. A. 9, 1936).

[30]*West Side Irrigation Co. v. United States,* 246 F. 212 (C. A. 9, 1917); *Miller & Lux v. San Joaquin Light & Power Corporation,* 65 P. 2d 1289 (Cal., 1937); *Ament v. Bickford,* 247 P. 952 (Wash., 1926).

ings for the enforcement of the judgment and precludes him from proceeding with an action founded on the contract, either for damages, for an injunction restraining violation of the agreement, or for other appropriate relief.

It is respectfully submitted that the decision of the lower Court should be affirmed.

Dated, Coolidge, Arizona,
November 1, 1955.

Respectfully submitted,
CHAS. H. REED,
Attorney for Amicus Curiae.

(Appendices I, II, III, IV, V, VI and VII.)

Appendices.

Appendix I

EXCERPTS AND VERBATIM QUOTATIONS.

From: Printed Hearings before the Committee on Indian Affairs, House of Representatives, 66th Congress, First Session, (Vol. 2 of Two Volumes and generally known as "Appendixes A, B, and C". Printed by Government Printing Office at Washington 1919.) Pages 3 to 291, inclusive.

"Appendix A—Report on the San Carlos Irrigation Project and the History of Irrigation along the Gila River".

This Appendix is cited in the first paragraph of the Act of June 7, 1924 (43 Stat. 475). For convenient reference the excerpts and full quotations therefrom will be shown by page numbers of said printed report. They are:

1. Pages 5 and 6:

"Department of the Interior
United States Indian Service (Irrigation).
Los Angeles, Calif., November 1, 1915.

Commissioner of Indian Affairs,
Washington, D. C.
(Through Mr. W. M. Reed, chief engineer.)

Sir: The following report on the status of the available water supply, and the estimated cost of the proposed San Carlos irrigation project on the Gila River, Ariz., is respectfully submitted.

"This investigation was undertaken in accordance with an authority from the Secretary of the Interior, No. 120603, dated November 8, 1913, and was continued in compliance with an item in the Indian appropriation act approved August 1, 1914, providing for investigations in connection with the San Carlos irrigation project. The initial authority provided as follows:

> For all purposes necessary for proper conduct of surveys, observations, and examinations to determine the extent of water rights in and to the normal and flood flow of the Gila River, Ariz., in connection with the old Indian ditches on the Gila River reservation and others, remaining available for appropriation and use under the legal theory of prior appropriations and use and for preparation of maps, plans, drawings, specifications, and such other records as may be necessary to determine said water rights and the feasibility of any new irrigation project for Indian lands.

"The item of the Indian appropriation act, above referred to, provided for an investigation recommended by the Board of Engineer officers of the United States Army. That part of the act relating to this matter reads as follows:

> For investigations recommendsd by the Board of Engineer officers of the United States Army as set forth in paragraph two hundred and seventeen of their report to the Secretary of War on February fourteenth, nineteen hundred and fourteen, House Docu-

> ment number seven hundred and ninety-one, sixty-third Congress, second session, and report as to the supply of the legally available water, acreage available for irrigation, and titles thereto, the maximum and minimum estimated cost of the San Carlos irrigation project, including dam and necessary canals, ditches and laterals, with recommendation and reasons therefor, and the probable cost of adjudication of water rights along the Gila River necessary thereto, and to take the steps necessary to prevent the vesting of any water rights in addition to those, if any, now existing until further action by Congress, $50,000.

"In compliance with this act the investigations were continued under authority No. 80303, dated September 8, 1914, issued by the Secretary of the Interior, which provided:

> For all purposes necessary for continuing the conduct of surveys, observations, examinations, and investigations to determine the extent of water rights in and to the normal and flood flow of the Gila River, in Arizona, in connection with the old Indian ditches on the Gila River reservation, and others remaining available for appropriation and use under the legal theory of prior appropriation and use, and for the preparation of maps, drawings, specifications, and such other records as may be necessary to determine said water rights, and the feasibility of the San Carlos project.

SCOPE OF INVESTIGATION.

"This investigation, as directed in the above act, was undertaken primarily for the purpose of securing data relative to the existing water rights along the Gila River to assist in the determination of the quantity of water legally available for the proposed San Carlos irrigation project. The report also includes an estimate of the maximum and minimum cost of the project, as called for in the act".

2. Page 31: "The permissible annual draft of a practicable reservoir at San Carlos, based on our present knowledge, should therefore lie between 300,000 acre-feet as an upper and 250,000 acre-feet as a lower limit. A greater draft would not be permissible, while a smaller draft would fail to utilize the possibilities of the project. Insofar as the annual draft is concerned, these two figures form the basis of the maximum and minimum cost of the project".

3. Page 78:

"Duty of Water.

It seems to be the consensus of opinion that between 3 and 4 acre-feet of water per annum is required for successful irrigation under the conditions obtaining along the lower Gila."

4. Pages 93 and 94: "The hydrographic investigation indicates that while the flow of the Gila varies widely from year to year, it seems to follow cycles of nine-year periods. A reservoir, to be of the greatest economic use should supply hold-over storage capacity based upon the run-off for a complete cycle.

The annual discharge of the Gila at the San Carlos dam-site based on nine-year cycles is estimated to be 350,000 acre-feet for the mean, 412,000 acre-feet for the maximum, and 281,300 acre-feet for the minimum. The maximum annual discharge of which there is record amounts to 1,011,082 acre-feet; the minimum to 99,960 acre-feet. The estimated maximum flood at San Carlos amounted to approximately 100,000 second-feet and extended over a period of six days.

"The reservoir drafts are based on a net evaporation of 60 inches per annum. A reservoir 190 feet in depth at the dam-site will have a storage capacity of 854,800 acre-feet. This reservoir will supply an annual draft of 300,000 acre-feet during the mean nine-year cycle, but during the least low-water period, with the assistance of the San Pedro, the flow of which is assumed to be 10 per cent of the Gila, it would have been dry for a period of 15 months. Without the assistance of the San Pedro it would have been dry for a period of 31 months. This is the most severe low-water period of which there is record, and it seems probably that it will not reoccur for 30 or 40 years. During the remaining period of the 21 years over which the records extend, this draft could have been maintained.

"The reservoir, with the assistance of the San Pedro, would have supplied an anuual draft of 250,000 acre-feet during the entire period."

5. Page 95: "The minimum amount of water required to produce a succession of crops during the

year has been accepted as 3 acre-feet per annum applied to the land. The greatest amount that should be used without incurring waste is accepted as 4 acre-feet.

"An annual draft of 300,000 acre-feet with a duty of water of 3 acre-feet will admit of the irrigation of 80,000 acres of land, allowing for transmission losses in the San Carlos Canyon and 20 per cent seepage losses in the canals. The above figures form the basis for the minimum reclamation charge per acre." (Emphasis supplied.)

"An annual draft of 250,000 acre-feet with a duty of water of 4 acre-feet, would irrigate 50,000 acres of land. These figures form a basis for the maximum reclamation charge per acre."

6. Pages 95 and 96: "The storage project, planned on a basis of an annual draft of 300,000 acre-feet *to irrigate 80,000 acres of land* with a duty of water of 3 acre-feet, will cost a total of $5,497,533, exclusive of water rights, and including these, $6,593,503. The construction charge on this basis will amount to $68.72 per acre. Including the purchase of water rights, the reclamation charge will be $82.42 per acre. These are the minimum construction and reclamation charges." (Emphasis supplied.)

"The project, based on an annual draft of 250,000 acre-feet to irrigate 50,000 acres of land with a duty of water of 4 acre-feet, will cost $5,087,577, exclusive of water rights; including these $6,183,527. The construction charge on this basis amounts to $101.75 per

acre, the total charge, including the purchase of water rights, to $123.67. These figures are the maximum construction and reclamation charge per acre."

7. Pages 96, 97, 99:

"Conclusions.

"The proposed San Carlos project is entirely practicable from a construction standpoint, and is eminently desirable in that it will develop agriculturally a large section of Arizona which is now unproductive, but it has some serious faults, of a physical and economic nature, that should receive careful consideration before any plan of reclamation is adopted.

"* * *

"*The most attractive plan so far considered for the San Carlos project* is that presenting the minimum reclamation charge per acre. This *is based on an annual draft from the reservoir of 300,000 acre-feet, enabling the irrigation of 80,000 acres of land,* with a duty of water at 3 acre-feet per annum. To attempt to reduce this charge would be impracticable, for to increase the reservoir draft or increase the duty of water to supply a greater area would be extremely hazardous." (Emphasis supplied.)

"* * *

"To be a success the reclamation charge per acre on an irrigation project and the annual operation and maintenance expense should have such a relation to the value of the crops produced as will permit the average irrigator a fair return on his labor and money

invested, under average-crop market conditions. Otherwise the dissatisfied rancher will eventually seek more profitable employment elsewhere and the land remain idle. The operation and maintenance charges remaining practically the same will fall more heavily on the remaining farmers, who in turn will be compelled to abandon the land and the project, and, if in corporate ownership, it will finally be forced into the hands of a receiver. This is the history of many irrigation projects when the charges have been too high, and it partly explains the failure of the organization previously formed to irrigate the lands in the vicinity of Florence by means of flood water."

Appendix II

VERBATIM QUOTATIONS.

From: House Document No. 791, 63d Congress, 2d Session,—otherwise known as, and referred to in the Act of May 18, 1916, 39 Stat. 123-130, and in the "Landowners' Agreement with Secretary of the Interior, San Carlos Project",—

> "Report to the Secretary of War of a Board of Engineer Officers, United States Army, under Indian Appropriation Act of August 24, 1912, on the San Carlos Irrigation Project, Arizona",

all as transmitted to The Speaker, House of Representatives, by the Secretary of War, with his letter of February 24, 1914. That letter printed at Page 5 of said Document No. 791 reads:

"To The Speaker, House of Representatives,

Washington, D.C.

Sir: Section 2 of the act approved August 24, 1912, making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, provides as follows:

> That the Secretary of War be, and he hereby is, directed to convene a board of not less than three engineers of the Army of wide reputation and large experience to make the necessary examinations, borings, and surveys for the purpose of determining the reasonability and practicability of constructing a dam and reservoir at or in the vicinity of the Box Canyon, on the San Carlos Indian Reservation, known as the site of the pro-

posed San Carlos Reservoir on the Gila River, Arizona, and the necessary irrigation works in connection therewith to provide for the irrigation of Indian, private, and public lands in the Gila River Valley. Such board of engineers to submit to Congress the results of their examinations and surveys, together with an estimate of cost, with their recommendations thereon, at the earliest practicable date.

In accordance with that provision of law a board of engineer officers, including Lieut. Cols. W. C. Langfitt and C. H. McKinstry and Maj. Harry Burgess, was appointed September 19, 1912. The report of the board dated February 14, 1914, accompanied by photographs and drawings pertaining thereto and furnishing the information required by the act is submitted to Congress herewith.

Very respectfully,
Lindley M. Garrison,
Secretary of War."

QUOTATIONS FROM NUMBERED PARAGRAPHS.

"118. Diagram No. 7 shows that the reservoir formed by a dam 180 feet high to spillway would not have furnished 250,000 acre-feet through the dry period 1898-1904, and that the deficiencies in 1903 and 1904 would have been so great that *in the absence of an auxiliary pumping supply crops would have suffered.* This assumes that in 1902 the full draft of 250,000 acre-feet would have been taken, notwithstand-

ing that on January 1, 1902, the reservoir contained but 279,000 acre-feet of water." (Emphasis supplied.)

"141. There are other advantages. The benefits of the project will be extended to a greater number of people, and the greater quantity of land with a water right of 2 acre-feet per acre will be better security to the Government for the cost of the project than would a smaller acreage with correspondingly larger water rights.

"*Again, all the farmers will be interested in increasing their security against drought by supplementing the stored water with water pumped from the underground supply;* in lining ditches to reduce evaporation and seepage; and finally in entering upon desilting as soon as that becomes necessary—since any diminution in the supply of 2 acre-feet would be more acutely felt than would the same percentage of reduction in the case of a greater allowance per acre." (Emphasis supplied.)

"146. Messrs. Thackery and Olberg express the opinion that water from the San Carlos project should be furnished for 50,000 acres of land on the Indian reservation, being 10 acres per capita on the basis of a prospective population of 5,000, the population in 1912 being 3,996."

"153. * * * The irrigation of the private lands will result in a certain quantity of water becoming available either at the surface or in wells on the reservation. It is impracticable to estimate the amount of this return flow, though on account of the high duty

of water assumed for this project, its percentage will be less than is usually counted on. Nor can it be known in advance whether this water will be of as good quality as the water originally applied. On account of these uncertainties the board does not include any return water in the supply to be furnished by the project to the Indian lands."

"156. *Quality of lands and waters.*—In relation to the quality of the land and waters in this district, the board invites attention to the letter of Prof. R. H. Forbes, director of the Agricultural Experiment Station, University of Arizona, dated July 29, 1913, copy of which will be found in Appendix K and from which is quoted the following:

"* * *

"2. The well waters vary greatly in character, those along the Gila River being for the most part white alkaline in character, while those at a distance from the Gila River are for the most part black alkaline in character. A number of instances are observed where either black or white alkalies are contained in injurious excess; in other cases they are not contained in any damaging quantity. In cases of a large general development of the ground waters of the district through single or harmonious agencies, these waters should be so combined in irrigating that sodium carbonate and calcium sulphate contained may react in a manner improving the quality of the water.

"* * *"

"158. *There are irrigation wells in use near Florence and Casa Grande, and, as already pointed*

out, on the reservation lands on the north side of the river opposite Sacaton. Water from the wells at the Sacaton Agency has been used for irrigation for a number of years. * * * The quality of the ground water varies with the location of the wells, but there is sufficient evidence to show that at least in some wells in the Gila Valley the water is less alkaline than is the river water at very low stages. The board inspected crops of vegetables, corn, grain, and cotton at the experiment farm, Sacaton, growing in ground on which no water except that from the agency well had been used for six years. There was some appearance of alkali, but the farmer stated that all crops had done well during the six years in question. * * *" (Emphasis supplied.)

"159. Whatever might be the ultimate effect of using well water alone, no bad effects would follow the proper use of well water in conjunction with or supplementary to the river flow or stored river water. Some who have had experience with well water prefer to use it in conjunction with river water rather than to use river water alone. * * *"

"183. * * * The acreage suggested by Mr. Olberg of the Indian Service as that which will ultimately be required for the Pimas is 50,000, being 10 acres per capita for an assumed prospective population of 5,000. For such an area it is probable that the flow of the river would be needed up to a discharge so great as to practically require all waters, excepting in times of floods of some magnitude, to pass all lands now irrigated above the reservation."

"189. *Alternative. projects.—In case,* as the result of adjudication, such a quantity of water is decreed to private lands that *the project becomes prohibitively expensive as a project for the irrigation of Indian and private lands, there remain two methods of providing irrigation water for the Pima Indians, viz., a storage project for the Indians alone and a flood-water project with or without a pumping reserve.* In the discussion of these projects the board is handicapped by lack of accurate knowledge as to the quantity of water required to satisfy rights other than those of the Indians. *In the storage project* it will be assumed that the total quantity to be furnished yearly from the reservoir supply for all purposes is 100,000 acre-feet—87,500 for the Indians and 12,500 for private lands; that 250,000 acre-feet of capacity will be required in the reservoir for water storage and 187,500 acre-feet for 50 years of silt accumulations. This will necessitate a dam 155 feet high. Making reasonable reduction in the item of flowage damage in the estimate of the larger project, assuming the cost of a diversion dam at the reservation to be the same as that of the one figured on above Florence, and omitting the cost of the canals contemplated in the larger project, *the cost will be about $90 per acre. Desilting, when desilting became necessary, would amount to about $8.50 per acre per year. The board considers these costs prohibitive."* (Emphasis supplied.)

"190. * * * Such experience as has been had with wells is favorable to the assumption that underground

water within easy reach of pumps is available on both sides of the river; but there is no present means of knowing whether the underground supply will continue to furnish indefinitely 2 acre-feet per acre yearly for 40,000 acres of land. It is necessary, however, to estimate on a well and pump system capable of this duty on account of the long periods, sometimes several months in duration in which under existing conditions, which are assumed to continue, little or no water is obtainable from the river. * * *"

"202. The board finds that the San Carlos irrigation project is entirely feasible from physical considerations."

"203. The advisability of the project, as before stated, will depend on its cost as compared with the benefits to result from it."

"204. The cost of the project per acre will depend upon the number of acres that can be taken under the project, and this upon the quantity of water physically and legally available."

Appendix III

VERBATIM QUOTATIONS.

From: Printed Hearings before the Subcommittee of House Committee on appropriations. Seventieth Congress, First Session. Printed by Government Printing Office at Washington, D. C., 1928.

(The following appears from the Statement of Justification submitted to the Subcommittee by the Bureau of Indian Affairs, pages 276 through 279 inclusive.)

1. Page 277: *"The proposed San Carlos project, including the diversion project of 62,000 acres, will total approximately 100,000 acres, of which 80,000 acres will be supplied with gravity water and 20,000 acres will be supplied by pumps from underground sources in connection with drainage."* (Emphasis supplied.)

2. Pages 277 and 278:

"Summary of Work Remaining to Be Done.

"The work remaining to be done after the close of the fiscal year 1927 is very great and may be summarized as follows, the costs having been estimated as closely as possible in the absence of detailed surveys and plans:

"1. Complete surveys and relocation of G.L.O. corners and the preparation of plans for the completed system of canals for the distribution of water, including a detailed estimate of cost of all features. This should at the same time include the collection of data

regarding all existing wells and pumping plants and a study of underground water conditions upon which to base plans for a comprehensive drainage system by means of pumps and other methods, estimated cost of surveys, plans, and estimates....$50,000

* * * * * *

"11. Construction of drainage system for entire project including purchase of existing plants and construction of new plants, but not including cost of power development and transmission lines, 100,000 acres at $17 .....$1,700,000"

3. Page 279: "The balance of the drainage work should be carried on in accordance with the requirements as they develop.

"For the fiscal year 1929, $485,000 is requested.

"Summary of areas that can be served under constructed and contemplated project works when water is available

Date	White		Indian		Total		Total
	Gravity	Pumped	Gravity	Pumped	Gravity	Pumped	
ıne 30, 1927	15,000	0	10,000	0	25,000	0	25,000
ıne 30, 1928	20,000	0	15,000	0	35,000	0	35,000
ıne 30, 1929	30,000	0	20,000	0	50,000	0	50,000
ıne 30, 1930	35,000	1,000	25,000	1,000	60,000	2,000	62,000
ıne 30, 1931	40,000	2,500	35,000	2,500	75,000	5,000	80,000
ıne 30, 1932	40,000	6,250	40,000	6,250	80,000	12,500	92,500
ıne 30, 1933	40,000	10,000	40,000	10,000	80,000	20,000	100,000"

Appendix IV

Act of Congress Approved March 7, 1928 (45 Stat. 200)

"(Public—No. 100—70th Congress)
(H. R. 9136)

"An Act Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1929, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1929, namely: * * *."

"*For all purposes necessary to provide an adequate distributing, pumping and drainage system for the San Carlos project,* authorized by the Act of June 7, 1924 (Forty-third Statutes, page 475), and to continue construction of and to maintain and operate works of that project and of the Florence-Casa Grande project; and to maintain, operate, and extend works to deliver water to lands in the Gila River Indian Reservation which may be included in the San Carlos project, including not more than $5,000 for crop and improvement damages and not more than $5,000 for purchases of rights-of-way, $485,000: *Provided,* That in addition to the amount herein appropriated the Secretary of the Interior may also incur obligations and enter into contract *for development* of *electrical*

power at the Coolidge Dam as an incident to the use of the Coolidge Reservoir for irrigation, such contract not exceeding a total of $350,000 and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof: * * *.

"*Provided further,* That the Secretary of the Interior is authorized to accept the conveyance to the United States for the benefit of the San Carlos project of canals, reservoirs, *pumping plants,* water rights, lands, and rights of way, and he may pay for damage to crops and improvements incident to constructing project works: * * *" (Emphasis supplied.)

Appendix V

Official Records of Bureau of Indian Affairs and San Carlos Irrigation and Drainage District Regarding San Carlos Project Irrigation and Drainage Well System.

1. Data covering San Carlos Project irrigation and drainage wells drilled, acquired and equipped at the end of the fiscal year 1936.

   (a) Portion of San Carlos Project Annual Report. Fiscal year 1936. (Bureau of Indian Affairs) pages 11-13:

Data relating to irrigation and drainage wells drilled, acquired and equipped at the end of the fiscal year 1936 is as follows:—

Well No.	Year Drilled	Part of Project	Depth Drilled	Maximum Test G.P.M. & Lift	Pumping Equipment Capacity	H
1	1934	Florence	212	.....	1900 @ 100 ft.	7
2	1934	"	216	.....	1900 " 100 "	7
3	1934	"	212	.....	1900 " 100 "	7
4	1934	"	220	2000 @ 115′	1900 " 100 "	7
5	1934	"	350	4000 " 91	2500 " 90 "	7
6	1935	"	138	3000 " 32	3000 " 80 "	7
7	1935	"	162	1300 " 43	Not equipped.	
7A	1935	"	308	2600 " 40	2500 @ 80 ft.	7
8	1934	"	212	3700 " 95	3000 " 80 "	1(
9	1934	"	254	2400 " 75	2500 " 90 "	7
10	1934	"	259	3400 " 78	3000 " 90 "	1(
11	1934	"	290	2500 " 76	2500 " 90 "	7
12	1935	"	181	1900 " 72	1900 " 100 "	5
13	1934	"	230	4500 " 57	2500 " 80 "	5
14	1920	"	312	.....	1400 " 100 "	5
15	1934	Blackwater	212	4800 @ 76	3000 " 90 "	1(
16	1924	Coolidge E.	208	.....	2500 " 80 "	7
17	1934	"	350	1800 @ 89	1600 " 100 "	(
18	1934	"	226	1900 " 89	1600 " 100 "	(
19	1934	"	216	2200 " 82	1900 " 90 "	(

ell o.	Year Drilled	Part of Project	Depth Drilled	Maximum Test G.P.M. & Lift	Pumping Equipment Capacity	H.P.
)	1934	Coolidge E.	204	3200 @ 81	1900 @ 90 ft.	50
	1934	"	216	3300 " 72	3000 " 80 "	100
;	1934	"	305	2600 " 65	2500 " 80 "	75
;	1934	"	228	4200 " 67	3000 " 80 "	100
:	1934	"	256	4500 " 75	2500 " 90 "	75
	1920	"	220	.....	1900 " 100 "	60
;	1934	"	406	2500 @ 70	2500 " 90 "	75
	1934	Coolidge W.	260	2100 " 72	1900 " 90 "	60
;	1934	Coolidge E.	258	2600 " 68	2500 " 80 "	75
)	1934	Coolidge W.	200	2800 " 56	3000 " 90 "	100
)	1934	"	270	2800 " 60	3000 " 90 "	100
	1934	"	421	2000 " 86	1900 " 100 "	75
2	1934	"	206	4000 " 67	3000 " 80 "	100
;	1934	Blackwater	192	4300 " 65	3000 " 80 "	75
	1934	"	220	5400 " 72	3000 " 80 "	75
)	1934	"	250	4800 " 70	3000 " 80 "	100
;	1934	"	214	4000 " 87	2500 " 80 "	75
	1934	"	222	4700 " 90	3000 " 80 "	100
;	1934	"	218	3500 " 95	2500 " 80 "	75
)	1934	"	220	4700 " 83	2500 " 80 "	75
)	1934	Coolidge W.	224	3400 " 94	2500 " 90 "	75
)	1930	Sacaton	176	3100 " 87	2500 " 90 "	75
;	1930	"	179	3100 " 91	2500 " 90 "	75
	1930	"	176	1600 " 72	1400 " 70 "	40
)	1935	Diesel Plant	515	2000 " 85	1000 " 100 "	30
	1934	Casa Blanca	376	1900 " 85	1400 " 100 "	50
2	1934	"	250	1500 " 91	Not equipped.	
;	1934	"	164	3000 " 89	1900 @ 80 ft.	50
:	1935	Sacaton	214	2400 " 105	1600 " 90 "	50
5	1935	"	250	2100 " 66	1900 " 80 "	50
;	1935	Casa Blanca	248	2300 " 34	3500 " 90 "	75
	1935	"	158	2800 " 50	1600 " 80 "	50
3	1935	"	106	2300 " 47	1400 " 80 "	40
)	1935	"	174	2100 " 62	1400 " 80 "	40
)	1935	"	186	2600 " 36	1400 " 80 "	50
	1935	"	160	2700 " 47	1200 " 80 "	40
2	1935	"	156	2400 " 43	1600 " 80 "	50
3	1935	San Tan	154	3500 " 70	2200 " 80 "	60
4	1935	"	210	1500 " 110	Not equipped.	
5	1935	"	251	1000 " 100	Not equipped.	
6	1935	"	206	1800 " 96	1200 @ 80 ft.	40
7	1935	"	225	2100 " 65	1400 " 80 "	40
8	1935	"	202	2100 " 67	1400 " 90 "	
9	1935	"	202	2100 " 58	1600 " 80 "	50
0	1935	Southside Area	210	3500 " 75	2500 " 80 "	75
1	1935	"	252	4200 " 72	3000 " 80 "	75
2	1935	"	230	4000 " 55	3000 " 80 "	75

Well No.	Year Drilled	Part of Project	Depth Drilled	Maximum Test G.P.M. & Lift	Pumping Equipment Capacity	H.P
73	1920	Coolidge E.	216	1900 @ 80	1600 @ 100 ft.	60
74	1924	"	224	.....	2200 " 90 "	75
75	1920	"	200	.....	1900 " 90 "	60
76	1935	"	616	1500 @ 115	Not equipped.	
77	1934	Casa Grande	304	1600 " 84	1400 @ 90 ft.	50
78	1934	"	290	1300 " 123	Not equipped.	
80	1934	"	248	2500 " 81	2200 @ 90 ft.	75
81	1934	"	216	2600 " 62	3000 " 90 "	100
82	1934	"	225	1100 " 116	1000 " 110 "	40
83	1934	"	268	2000 " 94	1600 " 110 "	60
84	1934	"	244	1500 " 114	1000 " 100 "	40
85	1935	"	250	800 " 100	Not equipped.	
86	1934	"	240	1300 " 118	1000 @ 100 ft.	40
87	1936	"	102	2200 " 60	1600 " 80 "	50
90	1934	"	244	1500 " 96	1000 " 100 "	40
91	1934	"	238	1600 " 85	1200 " 90 "	40
92	1934	"	310	1200 " 109	1000 " 100 "	40
93	1934	"	316	1600 " 80	1400 " 90 "	50
97	1934	"	242	1600 " 93	1400 " 90 "	50
98	1934	Southside Area	230	5700 " 57	3000 " 90 "	100
99	1934	"	168	5300 " 53	3500 " 80 "	75
00	1934	Casa Grande	174	400 " 80	Not equipped.	

United States
Department of the Interior
Bureau of Indian Affairs

Date: October 27, 1955

Pursuant to Title 28, section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Bureau of Indian Affairs, Department of the Interior, in my custody:

A portion of the San Carlos Project Annual Report. Fiscal year 1936.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of Indian Affairs to be affixed on the day and year first above written.

/s/ N. G. Murray
(Signature)
Administrative Officer
(Title)

(Seal of Bureau of Indian Affairs)

2. Cost Records covering expenditures for drilling, equipping and acquiring San Carlos Project irrigation and drainage wells.

   (a) San Carlos Project Monthly Summary Cost Report—Month of June, 1952. (Bureau of Indian Affairs):

United States
Department of the Interior
Bureau of Indian Affairs
Irrigation Service

PROJECT MONTHLY SUMMARY COST REPORT

459.57 San Carlos Project Month of June,

Code No.	Principal Feature	1-1 to 6-30-52	F. Y. 1952	Total to D
	Joint Works—Irrigation			
101	Plant in Service			
	Coolidge Dam & Reservoir			5,516,17
	Rice Station Power & Irrig.			92,28
	Amhurst-Hayden Dam			251,57
	Main Canal Heading			141,46
	Northside Canal			171,08
	Main Canal			559,80
	Pima Lateral to Res'n. Line			272,73
	Picacho Reservoir			20,50
	Drainage			710,83
	Stormwater Channels			75
	Stream Gauging			27,95
	Gila River Adjudication Suit			15,72
	Roads, Buildings & Grounds			86,12
	Telephone Lines			23,43
	Dist. System—White Lands			1,040,53
	Dist. System—Indian "			1,585,90
	Dist. No. 4 Office Expense			64,76
	Buckeye & Arlington Canal Settlement			114,40
	Buttes Dam			97,66
	Irrigation Wells (San Carlos Irrig. and Drainage Dist.)			328,83
	Rehab. Irrig. Wells & Pump	45,372.28	176,770.48	260,66
	Totals	45,372.28	176,770.48	11,383,22

(b) San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1953. (Bureau of Indian Affairs):

Bureau of Indian Affairs
Operating Statement

ea: Phoenix
;ency: San Carlos
tivity: Irrigation (Construction)

Fiscal Year: 1953
Period: 7/1/52-6/30/53
Operating Unit: Irrigation Project No. 57

Account Title	Program Status Initial (1)	Revised (2)	To Date (3)
'ERATING EXPENSE:			
construction of Picacho Reservoir	300,000.00		
Personal Services 9,500.00			
Other Expense 290,500.00			
51 Deep Wells and Pumping Plant			3,263.22
64 Accessory Elec. Equipment			1,057.59
83 General Property			153.48
50 Land and Land Rights			118.70
92 Engineering Plans and Surveys			24.65
95 Facilitating Services			3,500.00
distributed Costs—obligation for /10 of PP No. 14			357.42
Total	300,000.00		8,475.06

(c) San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1954. (Bureau of Indian Affairs):

BUREAU OF INDIAN AFFAIRS
OPERATING STATEMENT

Area: Phoenix — Fiscal Year 195

Agency: San Carlos Project — Period: 7/1/53-6/30

Activity: Irrigation Construction — Operating Unit 459

Project No. 5[illegible]- San Carlos Project

	Program Status		
	Initial	Revised	To Dat
W/O No. 623			
Deep Wells and Pumping Plants			
51 Structures and Improvements	191,000.00		72,973.
W/O No. 624			
Reservoirs, Dams, and Diversion Works			
50 Land and Rights	88,000.00		587
51 Structures and Improvements	209,685.87		322
	297,685.87		
W/O No. 625			
Engineering Plans and Surveys			
95.1 Facilitating Admin. Services	2,975.00		2,975
W/O No. 630			
Deep Wells and Pumping Plants			
51 Structures and Improvements	5,000.00		
W/O No. 635			
Reservoirs, Dams, and Diversion Works			
50 Land and Rights	333.75		300
Total.....	496,994.62		77,158

(d) San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1955. (Bureau of Indian Affairs):

BUREAU OF INDIAN AFFAIRS
OPERATING STATEMENT

AREA Phoenix — FISCAL YEAR 19

AGENCY San Carlos Project — PERIOD 7/1/54 -

ACTIVITY Irrigation Construction — OPERATING UNIT N

	PROGRAM STATUS		
	Initial	Revised	To Da
Outstanding Obligations, 1954	31,583.86	31,583.86	31,659.
Work Order No. 931 (1955)			
02 Reservoirs, Dams and Diversion Works			
50 Lands and Rights	297,000.00	87,500.00	3,384.
51 Structures and Improvements		209,275.00	5,323.5
Work Order No. 932 (1955)			
02 Reservoirs, Dams and Diversion Works			
51 Structures and Improvements	80,000.00	80,000.00	303.
Work Order No. 933 (1955)			
04 Deep Wells and Pumping Plants			
51 Structures and Improvements	87,700.00	174,190.00	74,196.
Work Order No. 934 (1955)			
04 Deep Wells and Pumping Plants			
51 Structures and Improvements	5,000.00	5,000.00	1,783.
Work Order No. 936 (1955)			
20 Engineering Plans and Surveys			
95.1 Administrative Services	2,271.34	3,060.00	3,060.
Work Order No. 937 (1955)			
17 General Property			
65 Movable Equipment	60,000.00	63,000.00	3,007.
TOTAL.....	531,971.34	622,026.00	122,718.

*Note: The cost figures marked * on foregoing records 2 a, 2 b, 2 c and 2 d, total the sum of $1,453,610.43 expended in construction and acquisition of project irrigation and drainage well system.

(e) San Carlos Project Pumps - Well numbers, Location, Remarks. Revised 6/1/55. (Bureau of Indian Affairs):

Project Pumps

Well No.	Location Sec	Twp	Rng	Remarks
1	28	4	10	Active
2	29	4	10	Active
3	32	4	10	Active
4	31	4	10	Active
5	31	4	10	Active
6	7	4	11	Active
7	7	4	11	Capped
7aR	12	4	10	Active
8	26	4	9	Active
9	28	4	9	Active
10	28	4	9	Active
11	29	4	9	Active
12	16	4	10	Active
13	1	5	8	Active
14R	3	5	8	Active
15	12	5	7	Capped
16	14	5	8	Active
17	30	5	9	Active
18	25	5	8	Active
19R	24	5	8	Active
20	13	5	8	Abandoned - Domestic Pump
21	14	5	8	Active
22	15	5	8	Active
23R	23	5	8	Active
24	26	5	8	Active
25	24	5	8	Abandoned - Filled
26	25	5	8	Active
27	17	5	8	Active
28R	25	5	8	Active
29	16	5	8	Abandoned - Filled
30	17	5	8	Active
31	17	5	8	Active
32	12	5	7	Active
33	7	5	8	Active
34	1	5	7	Active
35	36	4	7	Active
36	35	4	7	Active
37	35	4	7	Active
38	34	4	7	Active
39	36	4	7	Active
40	15	5	8	Active
41	9	5	7	Active
42	20	4	7	Abandoned - Filled NE
43	15	4	6	Active
44R	7	4	6	Active
45	18	4	7	Active
46	24	4	6	Active
47	23	4	6	Active
48	3	4	6	Active
49	12	4	5	Active
50	10	5	8	Diesel Plant Pump
51	3	4	5	Active
52R	22	5	7	Active
53	28	3	5	Active
54	16	4	6	Active
55	8	4	6	Active
56	7	4	6	Active
57	34	3	5	Active
58	32	3	5	Active
59	29	3	5	Active
60	31	3	5	Active
61	36	3	4	Active
62	25	3	4	Active
63	3	4	6	Capped
64	33	3	6	Capped NE
65	21	3	6	Capped NE
66	5	4	6	Active
67	31	3	6	Active
68	25	3	5	Active
69	24	3	5	Active
70	22	5	7	Active
71	15	5	7	Active
72	9	5	7	Active
73R	36	5	8	Active
74R	35	5	8	Active
75	23	5	8	Abandoned - Filled
76	29	5	9	Test Well - Domestic
77R	29	6	8	Active
78	35	6	9	Abandoned - Caved in
79	15	5	9	Active
80	29	6	8	Active
81	28	6	8	Active
82	30	6	8	Active
83	25	6	7	Active
84	35	6	7	Abandoned - Domestic
85	34	6	7	Active
86	34	6	7	Active
87	25	6	5	Capped
88	31	6	6	Active
89	6	6	9	Capped
90	1	7	6	Active
91	2	7	6	Capped
92	28	6	6	Active
93	28	6	6	Active
94	4	3	5	Active
95	4	3	5	Active
96				Number not used
97R	30	6	8	Active
98	22	5	7	Active
99R	13	5	7	Active
100	23	6	5	Capped NE
101	27	6	6	Abandoned - Filled
102	34	6	6	Active
103R	33	6	6	Active
104	6	7	6	Abandoned - Domestic
105	36	6	5	Capped
106	25	6	5	Active
107				Number not used
108				Number not used
109				Number not used
110	12	5	9	Active
111	19	5	9	Active
112	22	5	9	Active
113	32	5	9	Active
114	6	6	9	Active
115	32	6	7	Active
116	31	6	7	Active
117	6	7	7	Active
118	34	6	6	Active
119	4	5	7	Active
120	18	4	7	Active
121	4	4	5	Active
122	5	4	5	Capped
123	1	4	4	Active
124	7	4	5	Active
125	6	4	5	Active
126	1	4	4	Active
127	3	7	6	Active
128	32	6	7	Active
129R	31	5	9	Active
130	5	5	8	Active
131	34	3	4	Active
191	19	5	9	Active
201	20	5	9	Active

R-Replacement Well
NE-Never Equipped

Revised 6-1-55

United States
Department of the Interior
Bureau of Indian Affairs

Date: October 27, 1955

Pursuant to Title 28, section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Bureau of Indian Affairs, Department of the Interior, in my custody:

1. San Carlos Project Monthly Summary Cost Report. Month of June, 1952.
2. San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1953. Period 7/1/52-6/30/53.
3. San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1954. Period 7/1/53-6/30/54.
4. San Carlos Project Operating Statement, Irrigation Construction. Fiscal year 1955. Period 7/1/54-6/30/55.
5. San Carlos Project Pumps — Well numbers, Location, Remarks. Revised 6/1/55.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Bureau of Indian Affairs to be affixed on the day and year first above written.

/s/ N. G. Murray
(Signature)
Administrative Officer
(Title)

(Seal of Bureau of Indian Affairs)

3. Records of quantities of groundwater pumped and delivered to irrigation laterals by San Carlos Project irrigation and drainage pumping system during period 1934-1954.

(San Carlos Irrigation and Drainage District)

(a) Pumped Waters of San Carlos Project:

PUMPED WATERS OF SAN CARLOS PROJECT

QUANTITIES PUMPED AND DELIVERED TO IRRIGATION LATERALS BY PROJECT IRRIGATION AND DRAINAGE PUMPING SYSTEM DURING CALENDAR YEARS 1935 THROUGH 1954

Year	Total Pumped (Acre Feet)
1934	40,423
1935	66,878
1936	108,103
1937	70,202
1938	102,759
1939	102,955
1940	98,564
1941	55,867
1942	99,542
1943	91,114
1944	113,202
1945	102,190
1946	99,640
1947	122,263
1948	130,290
1949	117,862
1950	142,450
1951	99,592
1952	101,549
1953	117,104
1954	97,100
Total	2,079,649

I hereby certify that the foregoing paper entitled "Pumped Waters of the San Carlos Project" is a true copy of a document comprising part of the official records of the San Carlos Irrigation and Drainage District, in my custody.

In Witness Whereof, I have hereunto subscribed my name, and caused the seal of the San Carlos Irrigation and Drainage District to be affixed this 28th day of October, 1955.

W. S. Gookin
(Signature)
District Engineer
(Title)

(Seal of San Carlos Irrigation and Drainage District)

Appendix VI

Sec. 130.69 e (b), Title 25—Indians, 1949 Edition, Code of Federal Regulations. Page 153:

"130.69e *Delivery of water and operation and maintenance charges for district lands and works.* * * *"

"(b) The district, in accordance with the repayment contract, shall deliver 2 acre-feet of water or such part thereof as may be legally and physically available, to each irrigated acre in the district on payment of its said basic charge and any other charges due the district or the United States under the provisions of the landowners' agreement and the repayment contract: *Provided*, That all sums due the United States provided for in this section shall have been paid by the district in accordance with the provisions of this part and the terms of the repayment contract; all additional water, except free water, as provided for in the repayment contract shall be paid for by the landowners and collected by the district, at the rate of 50 cents per acre-foot for the third acre-foot per acre and at the rate of $1.00 per acre-foot for all additional water delivered, but the Secretary retains the right to change at any time the charge for excess water."

Appendix VII

Act of Congress Approved March 7, 1947. (61 Stat. 8)

"[Public Law 10—80th Congress]
[Chapter 10—1st Session]
[S. J. Res. 60]

JOINT RESOLUTION

"To authorize the San Carlos Irrigation and Drainage District, Arizona, to drill, equip, and acquire wells for use on the San Carlos irrigation project.

"Whereas the San Carlos irrigation project, Arizona, has been constructed under authority of the Act of June 7, 1924 (43 Stat. 475), as supplemented and amended; and

"Whereas a contract has been executed pursuant to such legislative authority between the Secretary of the Interior and the San Carlos Irrigation and Drainage District providing for the repayment of the proper share of the cost of project irrigation works by the San Carlos Irrigation and Drainage District on behalf of project lands in private and public ownership; and

"Whereas, at the beginning of the 1947 irrigation season, due to extended drought, there is virtually a complete lack of surface and reservoir water supply on the project for the irrigation of the lands of the district and the Pima Indians of the Gila River Indian Reservation, thus creating an emergency: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be constructed an extension of the system of wells and pumping works of the San Carlos irrigation project, including the enlargement, rehabilitation, and repair of the present pumping and drainage works of the said project, and in order to expedite and assist the accomplishment thereof, the San Carlos Irrigation and Drainage District, is hereby authorized, (1) to develop underground water within and without the area of the San Carlos Irrigation project exclusively for use as a part of the common stored and pumped water supply of said project; (2) to drill irrigation wells within and without the project area necessary for making underground waters available exclusively for use on all lands of the project, and equip the same with pumping facilities and equipment, including the deepening, replacement, and repair of existing project wells and equipment; and (3) to purchase with the consent of and under agreement with the owner thereof and to develop privately owned wells within or adjacent to the project areas, together with rights of way necessary to the operation of such wells: *Provided,* That the cost of the wells, exclusively for use as part of the common stored and pumped water supply of said project, equipment, and pumping works herein authorized to be constructed or acquired shall not exceed the sum of $380,000 and, within that limit, such cost shall be deemed a project charge to be distributed equally per acre over both the Indian lands and the lands in public and private ownership within the San Carlos irri-

gation project, and shall be repayable to the United States in accordance with existing law: *Provided further,* That the Secretary shall, at the earliest practicable date, enter into an agreement with the San Carlos Irrigation and Drainage District, which agreement shall describe the scope and extent of the work to be done by the district, the plans and specifications therefor, and such other provisions, in conformity herewith, as may be agreed upon between the Secretary and the district: *Provided further,* That the San Carlos Irrigation and Drainage District shall be reimbursed for costs expended by it in the construction and acquisition of such wells, equipment, and pumping works; and the Secretary is hereby authorized to make such reimbursement: First, by releasing the district from the payment of construction charges due the United States annually by the district under the repayment contract executed pursuant to said Act of June 7, 1924, as amended, as such charges become due and payable, until the amount of the payments so released shall equal the total amount of the funds certified under oath by the district as having been expended by it for the construction and acquisition of wells and equipment under the terms of the agreement provided for herein, the first of such annual payments so to be released by the Secretary being that due from the district on December 1, 1947; or second, by paying to the district the full amount of the funds so certified as expended by it in the work authorized to be done, or any balance thereof not otherwise paid as hereinabove provided, out of appropriations hereafter made by Congress for this purpose; and there

is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $380,000, or so much thereof as may be necessary, to carry out the purposes of this joint resolution.

Approved March 7, 1947."